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OFFICE OF PETITIONS

In re Application of
Eleanor L. Schuler et al.
Application No. 10/085,386
Filed: February 28, 2002
Attorney Docket No. 0607-1005

:DECISION GRANTING PETITION
:UNDER 37 CFR 1.137(b) AND
:NOTICE RESETTING PERIOD FOR
:REPLY TO NONFINAL OFFICE
:ACTION

This is a decision on the petition under 37 CFR 1.137(b), filed July 18, 2003, to revive the instant nonprovisional application for failure to timely notify the U.S. Patent and Trademark Office (USPTO) of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing. See 37 CFR 1.137(f).

The petition is **GRANTED**.

Petitioner states that the instant nonprovisional application is the subject of an application filed in an eighteen month publication country on February 25, 2003. However, the USPTO was unintentionally not notified of this filing within 45 days subsequent to the filing of the subject application in an eighteen month publication country.

In view of the above, this application became abandoned pursuant to 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) for failure to timely notify the USPTO of the filing of a counterpart application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing.

A petition to revive an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to notify the Office of a foreign filing must be accompanied by:

- (1) the required reply which is met by the notification of such filing in a foreign country or under a multinational treaty;

(2) the petition fee as set forth in 37 CFR 1.17(m);
and

(3) a statement that the entire delay in filing the required reply from the due date of the reply until the filing of a grantable petition was unintentional.

The instant petition has been found to be in compliance with 37 CFR 1.137(b). Accordingly, the failure to timely notify the USPTO of a foreign or international filing within 45 days after the date of filing of such foreign or international application as provided by 35 U.S.C. § 122(b)(2)(B)(iii) and 37 CFR 1.213(c) is accepted as having been unintentionally delayed.

The previous Request and Certification under 35 U.S.C. § 122(b)(2)(B)(i) has been rescinded. A Notice Regarding Rescission of Nonpublication Request which sets forth the projected publication date of November 13, 2003 accompanies this decision on petition.

There is no indication that a reply to the non-final Office action of May 14, 2003 has been filed. Accordingly, a shortened statutory period of three (3) months for reply to the non-final Office action of May 14, 2003 is restarted with the mailing date of this decision. Extensions of time pursuant to the provisions of 37 CFR 1.136(a) are permitted. Failure to timely reply within the period restarted by this decision will result in the abandonment of this application.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a change of address should be filed in accordance with MPEP 601.03. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Any inquiries concerning this decision may be directed to Latrice Bond at (703) 308-6911.

This application is being forwarded to Technology Center Art Unit 3762 to await a reply to the non-final Office action, the period of which is restarted to run from the mailing date of this decision on petition as noted above.

Latrice Bond

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Marianne E. Morgan for

Frances Hicks
Lead Petitions Examiner

ATTACHMENT: Notice Regarding Rescission of Nonpublication Request

cc: Barnes & Thornburg
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